

HR Weekly Podcast
07/17/2008

Today is July 17, 2008, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic concerns a recent federal court decision involving the Fair Credit Reporting Act, or FCRA.

In 2002, Prudential Insurance offered Derek Wilson a job contingent on the satisfactory completion of a background check. He accepted the job offer and was scheduled to begin work on August 12. Prudential retained CARCO Group, Incorporated, a company that is a leading provider of information resources, to perform the background check. CARCO used a subcontractor, Search & Find, which then hired an outside researcher.

On September 3, CARCO sent Prudential a report indicating that Wilson had a criminal record in Oklahoma. That day, Prudential notified Wilson by faxing him a letter withdrawing the job offer because he had failed to complete a satisfactory background check.

Upon receiving the letter, Wilson contacted the Oklahoma State Bureau of Investigation and the Oklahoma State Courts Network which both verified that he did not have a criminal record in Oklahoma. Wilson forwarded the verification to CARCO. On September 6, CARCO finally agreed that Wilson did not have a criminal record in the state. Nevertheless, Prudential never hired Wilson.

In federal court, Wilson sued CARCO for violation of the FCRA. When the trial court granted CARCO's motion to dismiss the case, Wilson appealed.

Before taking any adverse employment action against an employee based on information obtained through a consumer report, employers must follow requirements established by the FCRA. The Federal Trade Commission has concluded that criminal background checks are covered under the FCRA. According to the FCRA, consumer reporting agencies must follow reasonable procedures to ensure maximum possible accuracy concerning the individual to whom the report relates.

The court of appeals concluded that Wilson had established that CARCO failed to follow reasonable procedures to ensure the accuracy of the information provided. Because Wilson had easily obtained information disputing CARCO's inaccurate report, the court of appeals determined that Wilson had a viable claim against the company and consequently reversed the trial court and reinstated the lawsuit.

This case, which arose in Washington, D.C., is one of the few decisions that have addressed the FCRA. While the case does not have precedential value in South Carolina, it does however indicate the types of issues that courts are confronting as more and more information becomes available electronically. To defend against an FCRA claim, employers should at least be prepared to articulate a business necessity for requesting specific background information for a potential or current employee.

If you have any questions about this topic, please contact your HR consultant at 803-737-0900.

Thank you.